

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	4:06CR3108
)	
v.)	
)	
JAVIER ONTIVEROS-CERVANTES,)	TENTATIVE FINDINGS ON REVISED
)	PRESENTENCE INVESTIGATION
Defendant.)	REPORT
)	

Paragraph 30 of the Revised Presentence Investigation Report increases the offense level by two levels for possession of a firearm in connection to the instant offense. The defendant has objected to that enhancement, both in the Addendum to the Presentence Investigation Report and in the defendant's Adoption of Findings of Presentence Investigation Report, filing 22.

The prosecution has submitted the issues without evidence as stated in its Sentencing Statement and Motion to File Out of Time, filing 23.

In the absence of evidence on the subject, I tentatively find that the objection should be sustained and the enhancement by two levels for possession of a firearm in paragraph 30 of the Revised Presentence Investigation Report should not be allowed. In keeping with that, I tentatively find that the total offense level is 29. With a criminal history category of I, the defendant's guideline imprisonment range is 87 to 108 months.

Objections to these tentative findings may be made at the time of sentencing, but no evidence shall be received and none has been requested.

The Motion to File Out of Time, contained within filing 23, is granted.

Dated November 28, 2006.

BY THE COURT

s/ Warren K. Urbom
United States Senior District Judge